

FCC MAIL SECTION

Federal Communications Commission

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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the)	
Telecommunications Act of 1996)	CC Docket No. 96-150
)	
Accounting Safeguards Under the)	
Telecommunications Act of 1996)	

SECOND ORDER ON RECONSIDERATION

Adopted: January 11, 2000

Released: January 18, 2000

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. On December 24, 1996, the Commission adopted the *Accounting Safeguards Order* to implement the accounting provisions contained in sections 254, 260, and 271 through 276 of the Communications Act of 1934 ("the Act"), as amended by the Telecommunications Act of 1996 ("the 1996 Act").¹ These provisions of the 1996 Act generally prescribe the manner in which the Bell Operating Companies ("BOCs") may enter certain markets, including the provision of in-region interLATA services.² Eight parties filed petitions for reconsideration.³ Because no party raises new arguments that the Commission did not consider previously in this docket, we deny the petitions.⁴

¹ Accounting Safeguards Under the Telecommunications Act of 1996, *Report and Order*, 11 FCC Rcd 17539 (*Accounting Safeguards Order*). Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. §§ 151 *et seq.* The accounting requirements are contained in sections 254, 260, and 271 through 276. See 47 U.S.C. §§ 254, 260, 271-276.

² The Commission implemented the rules applicable to BOC provision of in-region interLATA services in the *Accounting Safeguards* and *Non-Accounting Safeguards* proceedings. See *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21905 (1996) ("*Non-Accounting Safeguards Order*"), petition for review pending sub nom. *SBC Communications v. FCC*, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997), *First Order on Reconsideration*, 12 FCC Rcd 2297 (1997), *Second Order on Reconsideration*, 12 FCC Rcd 8653 (1997), *aff'd sub nom. Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997).

³ Eight parties filed petitions for reconsideration: American Public Communications Council ("APCC"), Ameritech Corp. ("Ameritech"), Cincinnati Bell Telephone Co. ("CBT"), Cox Communications ("Cox"), GTE Service Corp. ("GTE"), MCI Telecommunications Corp. ("MCI"), SBC Communications ("SBC") and Southern New England Telephone Comp. ("SNET"). Ameritech, AT&T Corp. ("AT&T"), Bell Atlantic Corp. and NYNEX

2. In the *Accounting Safeguards Order*, the Commission concluded that modifying its existing accounting safeguards, which consist primarily of the affiliate transactions and cost allocation rules,⁵ would be the most cost-effective way to implement the 1996 Act's prohibitions against cross-subsidization.⁶ The Commission made four technical modifications to its existing rules. First, the Commission aligned the accounting treatment of assets and services transferred between regulated and nonregulated affiliates.⁷ Second, the Commission modified the criteria for applying one method for valuing affiliate transactions.⁸ Third, the Commission concluded that treating certain telecommunications services, known as "incidental interLATA services,"⁹ as nonregulated for federal accounting purposes would deter improper cost allocations in an administratively efficient way.¹⁰ Finally, the Commission adopted several requirements designed expressly for implementing section 272 of the Act,¹¹ including an Internet posting requirement, rules for administering the section 272(d)

("Bell Atlantic"), BellSouth Corp. ("BellSouth"), Cox, GTE, MCI, SBC, Telecommunications Resellers Association ("TRA"), and US West, Inc. ("US West") filed comments in response to the petitions for reconsideration. Bell Atlantic and NYNEX filed joint comments. Ameritech, CBT, SBC, and SNET filed reply comments.

⁴ The Commission addressed already one issue on reconsideration concerning financial reporting obligations of BOC electronic publishing operations. See 1998 Biennial Regulatory Review -- Review of Accounting and Cost Allocation Requirements, *Report and Order in CC Docket No. 98-81, Order on Reconsideration in CC Docket No. 96-150, Fourth Memorandum Opinion and Order in AAD File No. 98-43*, FCC 99-106 (rel. June 30, 1999) ("*Accounting Reform Order*").

⁵ The affiliate transactions rules prescribe the manner in which incumbent LECs record the costs of transactions between regulated and nonregulated affiliates on their books of account, and thereby help ensure that such transactions occur at arm's length. See 47 C.F.R. § 32.27. The cost allocation rules prescribe the manner in which incumbent LECs must separate the costs of activities regulated under Title II from the costs of nonregulated activities performed directly by the incumbent LEC. 47 C.F.R. §§ 64.901-904.

⁶ *Accounting Safeguards Order* at para. 1; see 47 U.S.C. §§ 254(k), 260(a), 271(h), 272(b)(5), 272(c), 273(g), 274(b)(3), 274(b)(4), 275(b)(2), 276(a)(1), 276(b)(1)(C).

⁷ *Accounting Safeguards Order* at paras. 144-48. Specifically, the Commission required incumbent LECs to compare the cost of affiliate transactions involving services with the fair market value of such transactions, and to record the most advantageous result for consumers on its books of account.

⁸ *Id.* at paras. 132-37.

⁹ Incidental interLATA services include audio programming, video programming, alarm monitoring services, two-way interactive video services, Internet services over dedicated facilities to or for certain schools, commercial mobile services, services that allow a customer located in one LATA to retrieve stored information from (or file information in) information storage facilities located in another LATA, and signaling information. See 47 U.S.C. § 271(g).

¹⁰ *Id.* at paras. 73-76, 257.

¹¹ See 47 U.S.C. § 272.

independent audit, and an additional modification to the affiliate transactions rules for circumstances addressed by the nondiscrimination safeguards of section 272(c).¹²

II. DISCUSSION

3. The petitioners seek reconsideration of the modifications made to the affiliate transactions rules,¹³ the Commission's accounting treatment of incidental interLATA services,¹⁴ and its interpretation of exogenous costs under the Commission's rules.¹⁵ In all cases, the petitioners raise no arguments that the Commission did not consider fully in the 1996 rulemaking.¹⁶ We therefore affirm the Commission's decisions in the *Accounting Safeguards Order*.¹⁷

4. We stress, however, that for the future the Commission has initiated an extensive evaluation of its accounting rules in light of industry developments since the 1996 Act, and we fully expect to take a fresh look at the accounting issues raised in these petitions in that proceeding, which will constitute a comprehensive review of all accounting and related reporting requirements.¹⁸ This

¹² *Accounting Safeguards Order* at paras. 122, 137, 197-205; see also 47 C.F.R. §§ 53.209-213.

¹³ *Accounting Safeguards Order* at paras. 101-66; see SBC Petition at 2-6; GTE Petition at 11-19; SNET Petition at 2-4; U S West Comments at 6.

¹⁴ *Accounting Safeguards Order* at paras. 73-76; see SBC Petition at 6-9; Bell Atlantic/NYNEX Comments at 5; BellSouth Comments at 5.

¹⁵ See 47 C.F.R. § 61.45(d)(1)(v) (addressing exogenous cost adjustments to price cap indices resulting from accounting adjustments); SBC Petition at 10-11; Ameritech Comments at 7; Bell Atlantic/NYNEX Comments at 6; BellSouth Comments at 5.

¹⁶ See *Accounting Safeguards Order* at paras. 62-76 (addressing accounting treatment of incidental interLATA services), 125-37 (addressing valuation methods for affiliate transactions), 260-64 (addressing exogenous cost adjustments).

¹⁷ The Commission's rules allow for the dismissal of a petition for reconsideration as repetitious. 47 C.F.R. § 1.429(i). See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, *Third Order on Reconsideration*, FCC 99-242 (rel. Oct. 1, 1999); Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, *Order on Reconsideration and Petitions for Forbearance*, FCC 99-223, para. 145 (rel. Aug. 16, 1999) (denying requests for reconsideration for parties that raised no new arguments); Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, *Second Order on Reconsideration and Memorandum Opinion and Order*, FCC 99-10, paras. 17, 34 (rel. June 30, 1999); Beehive Telephone Company, Inc., *Order on Reconsideration*, 14 FCC Rcd 5456, para. 9 (1999); Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, *Third Order on Reconsideration*, 11 FCC Rcd 6835, para. 10 (1996) (rejecting petitions for reconsideration that raised no new arguments).

¹⁸ Phase II of the Commission's accounting reform effort will begin in the last quarter of 1999, and will address long term changes needed as local exchange markets become more competitive. See *Accounting Reform*

extensive review will allow these issues to be considered in a comprehensive rather than piecemeal manner. In the comprehensive review, we are reevaluating our accounting and reporting requirements to determine whether they should be modified or eliminated as changes occur in the industry. We are conducting this comprehensive review in a manner that will allow the states, industry, and interested members of the public the opportunity to participate fully in our consideration of changes in our accounting and reporting requirements. During this process, the Common Carrier Bureau will continue to work closely with the National Association of Regulatory Utility Commissioners (NARUC) and state commissioners so that, in addition to eliminating unnecessary accounting and reporting requirements, the Commission and states will focus on further steps necessary to eliminate unnecessary overlap of Federal and state reporting requirements.¹⁹

III. SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

5. As required by the Regulatory Flexibility Act ("RFA"),²⁰ the Commission issued a Final Regulatory Flexibility Analysis ("FRFA") in its *Accounting Safeguards Order* in this proceeding.²¹ None of the petitions for reconsideration filed in Docket No. 96-150 specifically address, or seek reconsideration of, that FRFA. In this Order, the Commission promulgates no additional final rules, and our action does not affect the previous analysis. We therefore incorporate by reference the Commission's prior regulatory flexibility analysis. The Commission will provide a copy of this certification to the Chief Counsel for Advocacy of the SBA, and include it in the report to Congress pursuant to the SBREFA.²²

Order at para. 6; *see also* Common Carrier Bureau Announces Agenda for Initial Workshop for Phase I of the Comprehensive Review of Accounting and Reporting Requirements and Treatment of Ex Parte Presentations in Related Proceedings, *Public Notice*, DA 99-758 (rel. Apr. 19, 1999); Common Carrier Bureau Announces Initiative to Undertake Comprehensive Review of part 32 and ARMIS Requirements, *Public Notice*, DA 99-695 (rel. Apr. 12, 1999) (collectively referred to as "*Comprehensive Accounting Reform Notices*").

¹⁹ We note that a recent NARUC resolution recommends the use of standardized reports to improve the monitoring of telecommunications service quality. *See* NARUC Resolution Adopting NARUC State Staff Service Quality White Paper, Adopted in Convention, November 11, 1998. The resolution recommended that ILECs and competitive local exchange carriers (CLECs) collect service quality data on a monthly basis and report such data to Federal and state regulatory commissions on a quarterly basis. This would make the service quality information accessible to the states to facilitate comparisons between jurisdictions. NARUC also urged the Commission to ensure that its program imposes only reasonably necessary reporting obligations on industry participants in order to effectively monitor retail telecommunications service quality. We believe more initiatives like these would prove beneficial in reducing duplicative reporting requirements and would result in a more efficient and effective reporting process.

²⁰ *See* 5 U.S.C. § 604. The RFA, *see* 5 U.S.C. § 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

²¹ *Accounting Safeguards Order* at paras. 277-83.

²² 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), 201-205, 215, 218-220, 251, 254, 260, 271-276, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201-205, 215, 218-220, 251, 254, 260, 271-276, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and Sections 1.106 and 1.429 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.429, that the petitions for reconsideration filed by APCC, Ameritech, Bell Atlantic/NYNEX, CBT, Cox, GTE, MCI, SBC, and SNET are DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary